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TAGS: [EFIN](#) [PREL](#) [PHUM](#) [KJUS](#) [PGOV](#) [PINS](#) [IZ](#)
SUBJECT: IRAQ: ADDRESSING AMERICAN VICTIMS' CLAIMS

REF: A. STATE 69910
[1](#)B. STATE 65608
[1](#)C. STATE 61202
[1](#)D. STATE 50829
[1](#)E. BAGHDAD 1487

Classified By: NEA A/S Jeffrey Feltman for reasons 1.4 (b) and (d).

[1](#)1. (U) This is an action cable. Please see paragraph eight.

[1](#)2. (C) Summary: On July 16 -17, 2009 PM Maliki,s top legal and political advisers and representatives from State Justice, DOD and Treasury reached preliminary agreement on a draft state-to-state claims settlement text for resolving both known and unknown Saddam-era claims of U.S. victims. Building on progress made in July, and with the understanding that the Government of Iraq (GOI) is interested in finding a resolution prior to January elections, the Department would like to move forward expeditiously the process of coming to an agreed settlement amount and finally settling these claims. Taking into consideration the various categories of claimants -- high profile cases, other known cases, and possible other but as-yet-unknown cases -- the Department's Office of the Legal Adviser (L) has developed a preliminary estimated settlement number of \$650 million. The claimants and Congress continue to seek prompt compensation from Iraq through a government-to-government settlement. If diplomatic progress toward resolving the high profile cases stalls, the claimants, Congressional supporters appear ready to introduce new legislation to permit the victims to return their claims to U.S. courts. Finalizing the agreement and obtaining acceptable compensation for U.S. claimants, while alleviating the attachment risks from potential U.S. litigation that Iraq fears, will require coordinated legal, diplomatic and legislative actions in Washington and in Baghdad. See Action Request in paragraph eight. End Summary.

BACKGROUND

[1](#)3. (SBU) The USG and GoI have begun negotiation of an agreement to settle claims of U.S. victims arising from the Saddam era, most of which are by individuals who were held as human shields or were POWs who were tortured during the 1990 Gulf War. A recent Supreme Court ruling (the Beatty decision) reaffirmed the President,s 2003 exercise of statutory authority to remove any such claims from U.S. courts. The claimants and Congress continue to seek prompt compensation from Iraq through a government-to-government settlement.

[1](#)4. (C) Politically, the pressure to settle these cases came to a high point with passage of the NDAA of 2008 which permits the reopening of closed cases, makes it easier to bring new cases, and allows a broader range of assets to be used to satisfy judgments. Iraq expressed strong concern that these changes would put its reconstruction at risk, and expressed an intention to remove its assets from the Federal Reserve Bank in New York. After a December 2007 veto of the NDAA by President Bush, a compromise was reached giving the

President the power to waive the application of the provisions to Iraq. The compromise also included a sense of Congress that claims affected by the waiver executed by the President for Iraq should be settled through government-to-government negotiations. If diplomatic progress toward resolving the high profile cases stalls, the claimants, Congressional supporters appear ready to introduce new legislation to withdraw the Presidential waiver and return the claims to U.S. courts.

¶5. (C) Note also that these claims are a sub-set of debts and claims stemming from the Saddam regime. At the moment, the UN Security Council DFI protections largely protect Iraq's assets from legal attachments to satisfy such debts and claims. The UN protections are buttressed in the United States by Executive Order protections and, for the victims, claims, by the Beaty decision. Iraq has made considerable progress in settling its sovereign and commercial debts or claims on Paris Club terms. International financiers and investors looking at Iraq, however, will rate as the largest remaining source of attachment risk to Iraq the possibility that the victims, claims will be returned to U.S. courts.

¶6. (C) After numerous L-led contacts in Baghdad and Washington over the past year, on July 16 -17, 2009 (the week before PM Maliki's visit to Washington), PM Maliki's top legal and political advisers and representatives from State (L & NEA), Justice, DOD and Treasury reached preliminary agreement on a draft state-to-state claims settlement text for resolving both known and unknown Saddam-era victims, claims. The USG would take responsibility for extinguishing the covered claims, terminating litigation related to the claims, and recognizing Iraq's immunity in U.S. courts for such claims in return for the GoI's payment of a sum sufficient to provide fair compensation in final settlement of the claims. Cases falling outside the scope of the settlement, such as the September 11 and Oklahoma City bombing claims, would be left for the GoI to resolve on its own by taking action in U.S. courts, invoking the Beaty decision. While the draft agreement simply notes that Iraq retains the right to press claims of Iraqi nationals against the U.S., Iraq may use further negotiations to press these claims harder. Finalizing the agreement and obtaining acceptable compensation for U.S. claimants, while alleviating the attachment risks from potential U.S. litigation that Iraq fears, will require coordinated legal, diplomatic and legislative actions in Washington and in Baghdad.

REACHING AN ACCEPTABLE NUMBER

¶7. (C) Several assumptions were made in estimating the proposed settlement amount of \$650 million:

- As discussed in July, the GoI and its counsel will take action in cases with outstanding default judgments.
- As also discussed in July, existing cases involving terrorist acts on U.S. territory (e.g., Oklahoma City, 9/11 cases) will be handled by Iraq outside the agreement.
- For the Six Higher Profile Cases That are Addressed in Pending Legislation: L, relying as a starting point on a formula developed by the claimants, counsel and included in proposed legislation, has produced an estimate for those claims in the range of \$458 million.
- For Other Known Cases: L has reviewed the dockets of the small number of other known cases within the scope of the draft agreement. While the strength of these claims is unclear, we believe that resolving this category would not require more than \$1 million.
- For Possible Other Unknown Claims: The draft agreement provides for settlement of claims beyond known court cases. Although difficult to quantify, news that there is a settlement of Saddam-era claims of U.S. victims will likely result in the filing of new claims or the pressing of claims previously filed with the United Nations Compensation Commission (UNCC) by U.S. citizens in the early 1990s. Estimating the amount of compensation for these unknown claims involved assessing the types and numbers of claims that might arise (hostage/hiding, torture, death, physical injury). In our estimation, resolving these could require

another \$187 million. I may have additional options or considerations affecting this amount.
-- Preliminary Estimate: \$458 million plus \$1 million plus \$187 million equals \$646 million. We propose rounding this number up to \$650 million for simplicity.

ACTION

18. (C) Embassy Baghdad legal adviser is requested first to present to Dr. Fadel Jawad Khadum an initial settlement proposal of \$650 million and to seek his advice on next steps within the government. Embassy Baghdad political section at the highest appropriate level should follow up with a meeting with Dr. Rikabi and to request a response soonest. We also request that the Ambassador raise with PM Maliki the fact that we are now in negotiations over a settlement figure.

NON-PAPER

19. (SBU) Embassy may draw on the following non-paper in its discussion with the GoI and may also leave the paper with GoI interlocutors. Due to the sensitivity of the settlement sums being discussed, they are purposely not included in this paper.

Begin Non-Paper.

In March and July 2009, U.S. and Iraqi representatives discussed various options for resolving the claims of U.S. citizens who allege physical injuries arising during the Saddam era. The Iraqi side made clear two requirements of a possible settlement:

- A government-to-government resolution of these claims, rather than negotiation between the GOI and the U.S. claimants;
- A solution that gives Iraq legal peace and ensures that Iraq can put these claims behind it in a clear and final way.

The U.S. side explained the implications of including claims based on incidents in the United States, noting the Oklahoma City bombing and September 11 cases. The two sides agreed that such cases would not be covered by the government-to-government claims agreement.

The two sides also decided that the agreement would acknowledge Iraq's right to present claims of Iraqi nationals to the United States.

Based on these agreed approaches, the two parties worked out a proposed text for the agreement. The U.S. side agreed to propose after the July talks a dollar figure for a settlement amount that Iraq would pay under the agreement.

The agreement that the two sides discussed specified that, as to the claims covered by the agreement:

- The amount paid by Iraq would be the full and final settlement of all covered claims. This amount would cover not only the 6 cases addressed in legislation proposed in the U.S. Congress, but also other known claims and other unknown claims that are covered by the agreement.
- The agreement would obligate the USG to terminate all existing lawsuits and to prevent any future suits in U.S. courts based on the covered claims.
- The USG would be fully responsible for deciding which claims were meritorious, for allocating the settlement amount among claimants and for distributing those amounts. Iraq would be freed from all of these responsibilities.

The agreement shifts the uncertainties about unknown claims from Iraq to the USG. Even if those claims prove to be larger than the USG expects, the claims against Iraq would be extinguished. The USG will bear the burden of addressing all such claims.

Conclusion of the agreement would bring significant benefits to Iraq.

-- It would overcome a potential obstacle to Iraq,s investment and development objectives by removing a potential liability, which could improve Iraq,s ability to access capital markets and to borrow on favorable terms.

-- It would enhance goodwill towards Iraq in the U.S. Congress and with the Administration.

-- It would help to prepare Iraq for the end of the special immunities that apply to the Development Fund for Iraq in the UN Security Council. It would permit Iraq to demonstrate to the Council that it is working towards resolution of outstanding claims in good faith.

In the course of discussions in Washington, the U.S. side explained that legislation in Congress used a formula that addressed six cases and that led to a figure. The figure that we propose to include in the government-to-government agreement is larger than that amount. We propose a figure in the context of a government-to-government agreement that includes not only these six cases but other known cases (not including the Oklahoma City and September 11 cases), as well as unknown cases. As noted above, such an agreement provides benefits to Iraq that go far beyond resolution of a specified number of known cases, by putting all of these claims into the past and creating legal peace and certainty for Iraq.

End Non-Paper.

CLINTON